

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

KEVIN MITCHELL,

Plaintiff,

v.

**EQUIFAX CREDIT INFORMATION
SERVICES, EQUIFAX, INC., CHEVRON
CREDIT BANK, N.A., HOUSEHOLD
CREDIT SERVICES, WACHOVIA BANK
CARD SERVICES, and
TEXACO/CITIBANK SD,**

Defendants.

NO. 02 CV 3812

**ANSWER OF HOUSEHOLD CREDIT CARD SERVICES
TO CIVIL COMPLAINT OF KEVIN MITCHELL**

Defendant, Household Credit Card Services (“Household”), by their attorneys, Whittlesey McDowell & Riga and McCabe Weisberg & Conway, hereby responds to the civil complaint (the “Complaint”) of Kevin Mitchell (“Plaintiff”) as follows:

Response to Section Titled “Preliminary Statement”

1. Denied as stated. It is admitted that Plaintiff seeks the relief outlined in paragraph 1 of the Complaint. It is specifically denied that Plaintiff is entitled to such relief as against Household. By way of further answer, certain allegations contained in paragraph 1 of the Complaint state conclusions of law to which no responsive pleading is required, and therefore, they are denied. By way of further answer, the allegations contained in paragraph 1 of the Complaint do not conform with the requirements of Rule 8(a) of the Federal Rules of Civil Procedure, and therefore, do not constitute a proper pleading.

Response to Section Titled "Jurisdiction and Venue"

2. It is admitted that this Court has jurisdiction over the Plaintiff's Complaint.
3. It is admitted that venue is properly laid in this district.

Response to Section Titled "Parties"

4. Denied. Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint, and therefore, those allegations are denied.

5. Denied. The allegations contained in paragraph 5 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint, and therefore, those allegations are denied.

6. Denied. The allegations contained in paragraph 6 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint, and therefore, those allegations are denied.

7. Denied. The allegations contained in paragraph 7 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint, and therefore, those allegations are denied.

8. Admitted in part, denied as stated in part. Household's proper name is Household Credit Card Services and its principal place of business is 2700 Sanders Road, Prospect Heights, Ill., 60070. The remaining allegations contained in paragraph 8 of the Complaint are admitted.

9. Denied. The allegations contained in paragraph 9 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint, and therefore, those allegations are denied.

10. Denied. The allegations contained in paragraph 10 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and therefore, those allegations are denied.

Response to Section Titled "Factual Allegations"

11. Denied as stated as to Household. By way of further answer, once Household was made aware of the fraud, it took all reasonable and prompt steps to reverse the consequences of that fraud that were within its control.

12. Denied. By way of further answer, Household incorporates its reply to paragraph 11 of the Complaint here as if set forth here in its entirety.

13. Denied. By way of further answer, Household incorporates its reply to paragraph 11 of the Complaint here as if set forth here in its entirety. By way of further answer, Household lacks sufficient information to form a belief as to the truth of certain of the allegations contained in paragraph 13 of the Complaint, and therefore, those allegations are denied.

14. Denied. The allegations contained in paragraph 14 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, and therefore, those allegations are denied.

15. Denied. The allegations contained in paragraph 15 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, and therefore, those allegations are denied.

16. Denied. The allegations contained in paragraph 16 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint, and therefore, those allegations are denied.

17. Denied. The allegations contained in paragraph 17 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint, and therefore, those allegations are denied.

18. Denied. The allegations contained in paragraph 18 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint, and therefore, those allegations are denied.

19. Denied. The allegations contained in paragraph 19 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint, and therefore, those allegations are denied.

20. Denied as to Household. By way of further answer, Household promptly conducted its investigation into the alleged fraud, accepted as true the Plaintiff's claims at the

conclusion of that investigation, shifted the credit balance to the party believed responsible for the fraud and notified the credit agencies it used.

21. Denied. By way of further answer, Household incorporates its reply to paragraph 20 of the Complaint here as if set forth here in its entirety. 22. Denied. By way of further answer, Household incorporates its replies to paragraphs 11 and 20 of the Complaint here as if set forth here in its entirety.

23. Denied. Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint, and therefore, those allegations are denied.

24. Denied. Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint, and therefore, those allegations are denied.

25. Denied. By way of further answer, Household incorporates its replies to paragraphs 11 and 20 of the Complaint here as if set forth here in its entirety.

26. Denied. By way of further answer, Household incorporates its replies to paragraphs 11 and 20 of the Complaint here as if set forth here in its entirety.

27. Denied. By way of further answer, Household incorporates its replies to paragraphs 11 and 20 of the Complaint here as if set forth here in its entirety.

28. Denied. By way of further answer, Household incorporates its replies to paragraphs 11 and 20 of the Complaint here as if set forth here in its entirety.

29. Denied. The allegations contained in paragraph 29 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer,

Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint, and therefore, those allegations are denied.

30. Denied. By way of further answer, the allegations contained in paragraph 30 of the Complaint state a conclusion of law to which no reply is required, and therefore, those allegations are denied.

31. Denied as to Household.

Response to Section Titled “COUNT ONE-FCRA (Plaintiff v. EIS and Equifax)”

32. Household incorporates its previous responses as if set forth here in their entirety.

33. Denied. The allegations contained in paragraph 33 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint, and therefore, those allegations are denied.

34. Denied. The allegations contained in paragraph 34 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint, and therefore, those allegations are denied.

35. Denied. The allegations contained in paragraph 35 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint, and therefore, those allegations are denied.

36. Denied. The allegations contained in paragraph 36 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer,

Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint, and therefore, those allegations are denied.

37. Denied. The allegations contained in paragraph 37 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint, and therefore, those allegations are denied.

**Response to Section Titled "COUNT TWO-FCRA
(Plaintiff v. Chevron, Household, Wachovia and Texico/Citibank)"**

38. Household incorporates its previous responses as if set forth here in their entirety.

39. Denied. By way of further answer, the allegations contained in paragraph 39 of the Complaint state a conclusion of law to which no reply is required, and therefore, those allegations are denied.

40. Denied as to Household. By way of further answer, Household incorporates its replies to paragraphs 11 and 20 of the Complaint here as if set forth here in its entirety. By way of further answer, Household responds as follows:

- (a) For the purposes of this Complaint, Household was neither a consumer reporting agency nor a user of credit information;
- (b) Household had a legitimate business need for each consumer credit report of the Plaintiff it requested, if any;
- (c) Household has not willfully refused to comply with the Federal Credit Reporting Act in this matter;
- (d) Household has not obtained Plaintiff's consumer credit report

by use of false pretenses;

(e) Household has not reported any consumer credit information concerning the Plaintiff with knowledge that such information was erroneous;

(f) Household promptly notified the credit reporting agencies it uses upon its prompt confirmation of the fraud complained of by the Plaintiff;

(g) Plaintiff, as an alleged victim of identity fraud, has no private right of action against Household, a mere provider of credit information; and

(h) The cited statutory provisions allegedly violated by Household do not apply to a furnisher of consumer credit information.

41. Denied. By way of further answer, Household denies that it has cause the Plaintiff any harm or that its conduct would cause any reasonable person harm. By way of further answer, Household denies that plaintiff is entitled to an award of damages. By way of further answer, Household denies that Plaintiff is entitled to statutory damages, the trebling of damages or the reimbursement of his litigation costs and attorneys' fees.

**Response to Section Titled "COUNT THREE-DEFAMATION
(Plaintiff v. EIS and Equifax)"**

42. Household incorporates its previous responses as if set forth here in their entirety.

43. Denied. The allegations contained in paragraph 43 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer,

Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint, and therefore, those allegations are denied.

44. Denied. The allegations contained in paragraph 44 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint, and therefore, those allegations are denied.

45. Denied. The allegations contained in paragraph 45 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint, and therefore, those allegations are denied.

46. Denied. The allegations contained in paragraph 46 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint, and therefore, those allegations are denied.

47. Denied. The allegations contained in paragraph 47 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint, and therefore, those allegations are denied.

48. Denied. The allegations contained in paragraph 48 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint, and therefore, those allegations are denied.

49. Denied. The allegations contained in paragraph 49 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint, and therefore, those allegations are denied.

50. Denied. The allegations contained in paragraph 50 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint, and therefore, those allegations are denied.

51. Denied. The allegations contained in paragraph 51 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint, and therefore, those allegations are denied.

52. Denied. The allegations contained in paragraph 52 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint, and therefore, those allegations are denied.

**Response to Section Titled "COUNT FOUR-DEFAMATION
(Plaintiff v. Chevron, Household, Wachovia and Texico/Citibank)"**

53. Household incorporates its previous responses as if set forth here in their entirety.

54. Denied as to Household. By way of further answer, Household incorporates its replies to paragraphs 11 and 40 of the Complaint here as if set forth here in its entirety.

55. Denied as to Household. By way of further answer, Household incorporates its

replies to paragraphs 11 and 40 of the Complaint here as if set forth here in its entirety. By way of further answer, no communication by Household defamed the Plaintiff or was defamatory.

56. Denied as to Household. By way of further answer, Household incorporates its replies to paragraphs 11 and 40 of the Complaint here as if set forth here in its entirety.

57. Denied as to Household. By way of further answer, Household incorporates its replies to paragraphs 11 and 40 of the Complaint here as if set forth here in its entirety.

58. Denied as to Household. By way of further answer, Household incorporates its replies to paragraphs 11 and 40 of the Complaint here as if set forth here in its entirety.

59. Denied. By way of further answer, the allegations contained in paragraph 59 of the Complaint state a conclusion of law to which no reply is required, and therefore, those allegations are denied.

60. Denied. By way of further answer, the allegations contained in paragraph 60 of the Complaint state a conclusion of law to which no reply is required, and therefore, those allegations are denied.

61. Denied as to Household. By way of further answer, Household incorporates its replies to paragraphs 11, 20 and 40 of the Complaint here as if set forth here in its entirety.

62. Household incorporates its reply to paragraph 41 of the Complaint here as if set forth here in its entirety.

Response to Section Titled “COUNT FIVE-CPL (Plaintiff v. EIS and Equifax)”

63. Household incorporates its previous responses as if set forth here in their entirety.

64. Denied. The allegations contained in paragraph 64 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer,

Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 64 of the Complaint, and therefore, those allegations are denied.

65. Denied. The allegations contained in paragraph 65 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 65 of the Complaint, and therefore, those allegations are denied.

66. Denied. The allegations contained in paragraph 66 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint, and therefore, those allegations are denied.

67. Denied. The allegations contained in paragraph 67 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint, and therefore, those allegations are denied.

68. Denied. The allegations contained in paragraph 68 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint, and therefore, those allegations are denied.

Response to Section Titled “COUNT SIX-NEGLIGENCE (Plaintiff v. EIS and Equifax)”

69. Household incorporates its previous responses as if set forth here in their entirety.

70. Denied. The allegations contained in paragraph 70 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer,

Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint, and therefore, those allegations are denied.

71. Denied. The allegations contained in paragraph 71 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 71 of the Complaint, and therefore, those allegations are denied.

72. Denied. The allegations contained in paragraph 72 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 72 of the Complaint, and therefore, those allegations are denied.

**Response to Section Titled “COUNT SEVEN-NEGLIGENCE
(Plaintiff v. Chevron, Household, Wachovia and Texico/Citibank)”**

73. Household incorporates its previous responses as if set forth here in their entirety.

74. Denied as to Household. By way of further answer, Household incorporates its replies to paragraphs 11, 20 and 40 of the Complaint here as if set forth here in its entirety. By way of further answer, Plaintiff has failed to allege the elements of negligence, and therefore, the conclusory allegations contained in paragraph 74 of the Complaint are denied. By way of further answer, it is denied that Household breached any duty it owed to the Plaintiff, if any. By way of further answer, it is denied that any conduct or act of Household was the proximate cause of any harm to Plaintiff.

75. Denied as to Household. By way of further answer, Household incorporates its reply to paragraph 41 of the Complaint here as if set forth here in its entirety.

76. Denied as to Household. By way of further answer, Household incorporates its reply to paragraph 41 of the Complaint here as if set forth here in its entirety.

**Response to Section Titled “COUNT EIGHT-INVASION OF PRIVACY/
FALSE LIGHT (Plaintiff v. EIS and Equifax)”**

77. Household incorporates its previous responses as if set forth here in their entirety.

78. Denied. The allegations contained in paragraph 78 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 78 of the Complaint, and therefore, those allegations are denied.

79. Denied. The allegations contained in paragraph 79 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 79 of the Complaint, and therefore, those allegations are denied.

80. Denied. The allegations contained in paragraph 80 of the Complaint are directed to defendants other than Household, and therefore, they are denied. By way of further answer, Household lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint, and therefore, those allegations are denied.

**Response to Section Titled “COUNT NINE-INVASION OF PRIVACY/
FALSE LIGHT (Plaintiff v. Chevron, Household, Wachovia and Texico/Citibank)”**

81. Household incorporates its previous responses as if set forth here in their entirety.

82. Denied as to Household. By way of further answer, Household has made no intentional intrusion on the seclusion of Plaintiff’s private life, and therefore, the allegations contained in paragraph 82 are denied. By way of further answer, Household denies that it

unreasonably placed the Plaintiff in a false light before the public. By way of further answer, Household denies that it published a major misrepresentation of the Plaintiff's character, history, activities or beliefs sufficient to cause a reasonable man in Plaintiff's position to take serious offense to the publication, if any. By way of further answer, Household denies that it published anything about the Plaintiff that would cause mental suffering, shame or humiliation to a person of ordinary sensibilities.

83. Denied as to Household. By way of further answer, Household incorporates its reply to paragraph 41 of the Complaint here as if set forth here in its entirety.

84. Denied as to Household. By way of further answer, Household incorporates its reply to paragraph 41 of the Complaint here as if set forth here in its entirety.

Response to Section Titled "JURY TRIAL DEMAND"

85. Denied. By way of further answer, the allegations contained in paragraph 85 of the Complaint do not conform with the requirements of Rule 8(a) of the Federal Rules of Civil Procedure, and therefore, do not constitute a proper pleading.

Response to Section Titled "PRAYER FOR RELIEF"

WHEREFORE, Household respectfully request that Plaintiff take nothing on his Complaint from Household, and that the Complaint be dismissed with prejudice as against Household.

AFFIRMATIVE DEFENSES

AFFIRMATIVE DEFENSE ONE

Counts Four, Seven and Nine of the Complaint are preempted by the Plaintiff's Count Two under the Federal Credit Reporting Act (the "FCRA"), a federal statute that speaks

definitively and completely on the alleged subject matter of the Complaint.

AFFIRMATIVE DEFENSE TWO

Counts Four, Seven and Nine of the Complaint are statutorily preempted by Sections 1681h(e) and 1681t(b)(F) of the FCRA.

AFFIRMATIVE DEFENSE THREE

All damages allegedly suffered by the Plaintiff, if any, were the result of acts or omissions of persons other than Household and over whom Household had neither control nor responsibility.

AFFIRMATIVE DEFENSE FOUR

Plaintiff's claim for punitive damages violates Household's constitutional rights.

AFFIRMATIVE DEFENSE FIVE

Plaintiff's claim for punitive damages is not permitted by the FCRA.

AFFIRMATIVE DEFENSE SIX

Plaintiff lacks standing on his FCRA claim pursuant to section 1681s-2 of that act.

AFFIRMATIVE DEFENSE SEVEN

The Complaint fails to state claims against Household upon which relief may be granted.

Dated: Maple Shade, NJ
September 6, 2002

Respectfully submitted,

McCabe, Weisberg & Conway, P.C.
Suite 2080
First Union Building
123 South Broad Street
Philadelphia, PA 19109

-and-

Whittlesey McDowell & Riga
46 West Main Street
P.O. Box 127
Maple Shade, NJ 08056
(856) 482-5544

By: _____
Joseph F. Riga (PA Atty. ID No. 57716)

Co-counsel for Defendant, Household Credit
Card Services

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Answer to Complaint of Kevin Mitchell was served by United States mail, postage prepaid, upon the following:

Mark D. Mailman, Esq.
100 S. Broad Street
Philadelphia, PA 19110

Steven J. Adams, Esquire
Stevens & Lee
111 North Sixth Street
P.O. Box 679
Reading, PA 19603

Dated: Maple Shade, NJ
September 6, 2002

Joseph F. Riga

Co-counsel for Defendant, Household Credit
Card Services